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July 17, 1995

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M. Street, N.W.  
Room 222 - Stop Code 1170  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Reply Comments  
Proposed Amendment of FM  
Table of Allotments, MM Docket No. 95-68  
RM 8629

Dear Mr. Caton:

Transmitted herewith, on behalf of John P. Gillen are an original and four copies of  
Petitioner's Reply Comments, to a Notice of Proposed Rule Making.

If any questions should arise during the course of your consideration of this matter,  
it is respectfully requested that you communicate with the undersigned.

Very truly yours,



John P. Gillen  
12314 Dixie Drive  
Bishopville, Maryland 21813

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

RECEIVED

JUL 24 1995

In the Matter of  
Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations  
Berlin, Maryland

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)  
)

MM Docket No. 95-68  
RM - 8629

FCC MAIL ROOM

To: John A. Karousos  
The Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

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**REPLY COMMENTS TO NOTICE OF PROPOSED RULE MAKING**

The Commission has before it the petition for rule making filed by John P. Gillen ("Petitioner") requesting the allotment of Channel 235A to Berlin, Maryland as that community's second local FM service. The Petitioner hereby files Reply Comments to the Notice of Proposed Rule Making, 60 Fed. Reg. 5158 (1995) in this proceeding. The Petitioner restates that if the channel is allotted, he will file an application for a construction permit. If his application is granted, the Petitioner affirms that he will construct the facility promptly.

The Petitioner did receive by First-Class U.S. Mail the comments of Jerry E. Brown, CPBE, Director of Engineering, Benchmark Communications, Benchmark Radio Acquisition Fund I, LP, 168 Business Park Drive, Suite 201, Virginia Beach, VA 23462, Licensee of WDSD-FM, Dover, DE.

The Petitioner here by presents it 's Reply Comments to Benchmark Communications comments (hereafter referred to as "Benchmark"). At the outset the Petitioner restates, the commission has established that with a site restriction the placing of Channel 235A, at Berlin, MD. is in full compliance with Commission Rules. The Petitioner has performed and exhaustive Channel search of the area. The study shows that once Channel 235A is allotted to Berlin, MD it will be almost impossible to even place another station in the entire area under present Commission Rules on minimum separation requirements. The Petitioner feels it important to point out the proposes allotment of Channel 235A to Berlin, MD makes the very best use of the spectrum and the public interest would be well served.

The Petitioner has taken great effort to address each of the points in Benchmark 's comments. WDSD, FM, Dover, DE is a Class B FM, Section 73.210, (Station Classes) of the Commission Rules, shows that a Class B FM has a 52 kilometer contour distance coverage. The proposed Station at Berlin, MD will be Class A FM with a 28 kilometer contour distance coverage.

It 's just totally unrealistic for Benchmark to claim that they have a true impact on the Salisbury Ocean City Market. Further, the proposed station would have no impact on WDSD FM True Market, what so ever.

Further in it comments Benchmark, uses some very vague terms to cloud the issue as to why the community of Berlin, MD should have their interests subverted to the interests of Benchmark. Benchmark 's best efforts to cloud the facts, are weak and unconvincing. To anyone remotely familiar with the Salisbury/Ocean City Radio Market. Benchmarks use of phrases such as "Real World Interference" and "Over Radioed" these Phases are not designed not used to bring clarity to the matter at hand which is the best interest of the Community of Berlin, MD.

In the interest of clarity and brevity the "Petitioner" would like to get the following Facts on the record.

(1) The "Petitioner" is a longtime local resident within the predicted 1 millivolt contour of the proposed station (20 years in the same residency).

(2) The "Petitioner" is a long time broadcaster (in excess of 33 years) see Petitioner Exhibit #1, J.P. Gillen Resume. This exhibit clearly shows the "Petitioners" interest in and knowledge of the Salisbury/Ocean City Metro Market over 25 years in position's from General Manager of various stations to Sale Executive to Program Director to Radio Announcer. The "Petitioners" expertise would be hard to match in the Salisbury/Ocean City Metro Market.

Benchmark's comments try to make the case that a second station for the community of Berlin, MD would somehow financially impact WDSD-FM Dover/Wilmington, DE and the Salisbury/Ocean City Metro Market in general this case is vague and misleading!

Here are facts not addressed in Benchmarks comments, the Salisbury/Ocean City Metro Market is adjacent to the Dover/Wilmington De Metro Markets, but not apart of it. WDSD-FM is Licensed to the Dover/Wilmington market as is clearly shown in "Petitioners" Exhibit #2 Arbitron Radio Market Reports Salisbury/Ocean City Spring 1990 Page 3-13 and is still true today that WDSD-FM Licensed to the Dover/Wilmington DE Market and is listed outside of the Salisbury/Ocean City Metro Market.

The "Petitioners'" Exhibit #3 1990 Arbitron Radio Market Report Page 2-A clearly shows that Salisbury is in Wicomico County, MD and Ocean City is in Worcester County, MD and in the fact that this forms an East/West parallel line and constitutes the two key Counties of the Salisbury/Ocean City Metro Market. Somerset County, MD and Sussex County, DE were included in the "Metro" area by Arbitron in order to reach a statistically stable 210, 200 persons population figured for marketing purposes. This map clearly highlights Salisbury and Ocean City, it does not highlight Dover, DE (WDSD-FM's location in Kent County) which adjoins Sussex County, DE (a part of the Salisbury/Ocean City) Statistical Metro, that as we know is because Wilmington and Dover are considered to be the same Market.

"Petitioner" Exhibit #4 Maryland State Highway Administration clearly shows Dover, DE located 57 miles North of Salisbury, MD, 64 miles North of Berlin, MD and 69 miles North of Ocean City.

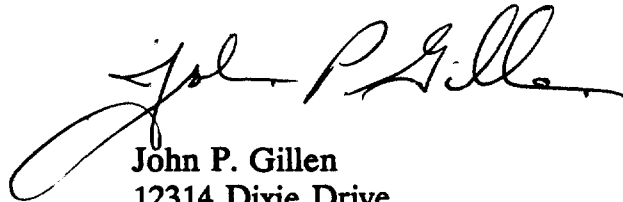
Benchmark Exhibit #1 Arbitron Reports Pages (1-2-3) clearly show Stations WABC-N.Y., WCAO-Baltimore, MD, WZXL-FM Wildwood, N.J., WBAL-Baltimore, MD registering in the survey higher than some of Salisbury/Ocean City Local Stations. These Stations are also physically outside the Salisbury/Ocean City Metro Market as is WDSD-FM. Yet Benchmark claims 33 Stations in the market vying for what is at best a guess of 9.7 million dollars in the radio market. The real question is of those 33 Arbitron surveyed Stations showing up in the market, how many like WABC, WBAL, WZXL, WCAO and WDSD DO NOT impact at all on the total market revenue for the Salisbury/Ocean City Metro Market. If the financial situation is so precarious for the market, why only WDSD-FM, Dover/Wilmington Station out of 33 would come forth to the Commission with comments on this matter.

The dire financial straits of the market as portrayed by Benchmark do not exist. Also Benchmark's Exhibit #2 phone logs, faxes and contest (\*Winners) all show "302" Delaware area codes located in Sussex County, although the WDSD-FM phone line is a toll free "(800)" number, not one "(410)" area code shows up (410 is Maryland the Salisbury/Ocean City's area code). Benchmark winner's sheets although chosen to report Sussex County, DE do show WDSD's true audience is in the Wilmington Area of New Castle, Newark, Bear, Smyrna and Dover, DE all in New Castle or Kent County not Sussex.

## CONCLUSION

It is respectfully requested that the Commission amend the FM Table of Allotments as requested. The Petitioner feels this change would be in the public interest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John P. Gillen". The signature is fluid and cursive, with a large loop at the end of the last name.

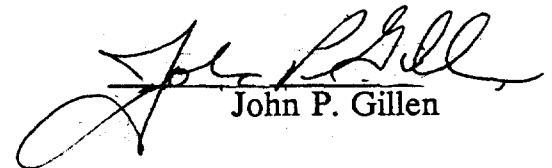
John P. Gillen  
12314 Dixie Drive  
Bishopville, Maryland 21813

July 19, 1995

AFFIDAVIT

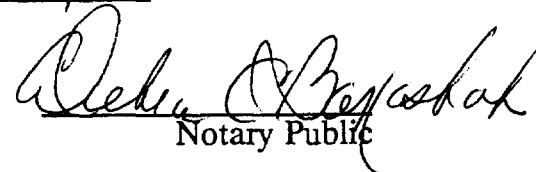
I, John P. Gillen of 12314 Dixie Drive, Bishopville, Maryland 21813, state the following:

1. I certify that, to the best of my knowledge and belief, all of the statements are true, correct, complete, and made in good faith.

  
John P. Gillen

Subscribed and sworn to before me this 21 day of JULY 1995.

• **DEBRA C. BANASHAK**  
Notary Public, State of Maryland  
My Commission Expires September 1, 1995

  
Notary Public

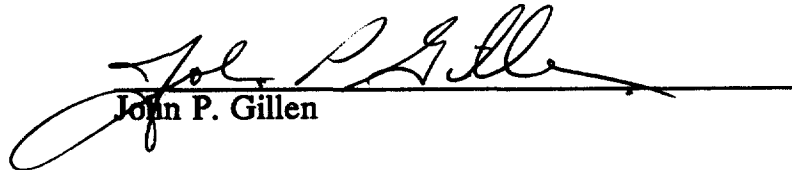
My Commission Expires: SEPT. 1, 1995

**CERTIFICATE OF SERVICE**

I, John P. Gillen, hereby certify that I have, on this 20th day of July, 1995, sent by first-class U.S. Mail, postage prepaid, copies of the foregoing "REPLY COMMENTS" to the following:

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Jerry E. Brown, CPBE  
Director of Engineering  
Benchmark Communications  
Benchmark Radio Acquisition Fund I, LP  
168 Business Park Drive, Suite 201  
Virginia Beach, VA 23462  
Licensee of WDSD-FM, Dover, DE

  
John P. Gillen

N/A  
Hand Delivered\*



**EXHIBIT 1**

JACK GILLEN  
12314 DIXIE DRIVE  
BISHOPVILLE, MD 21813  
(H) 410-352-5803  
~~(W) 410-723-4505~~

PROFESSIONAL EXPERIENCE:

JULY 1991 - **JUNE 1993**  
~~PRESENT~~

WWTR-FM STEREO: OCEAN CITY, MD 6000 WATTS  
WETT-AM: OCEAN CITY, MD 1,000 WATTS  
FORMATS: ALBUM ROCK (FM), NEWS TALK (AM)  
POSITION: GENERAL MANAGER  
RESPONSIBILITIES: COMPLETE DAY TO DAY OPERATIONS  
MANAGEMENT OF BOTH RADIO STATIONS PLUS  
SALES MANAGEMENT.

OCTOBER 1986--  
JUNE 1990

WKHI-FM STEREO: OCEAN CITY, MD 50,000 WATTS  
FORMAT: CHR  
POSITION: LOCAL ACCOUNT EXECUTIVE  
RESPONSIBILITIES: SALES AND SERVICE OF  
LOCAL ACCOUNT LIST.  
LEFT WKHI TO FORM GROUP TO PURCHASE A RADIO  
STATION IN VIRGINIA. PURCHASE WAS NOT  
CONSUMATED DUE TO CHANGES IN BANKING  
REGULATION SPECIFICALLY RELATING TO  
BROADCASTING FINANCING.

OCTOBER 1985--  
OCTOBER 1986

WQHQ-FM STEREO: OCEAN CITY, MD, SALISBURY, MD  
50,000 WATTS (WQHQ) 5,000 WATTS (WSBY)  
FORMATS: A/C (FM) MOR A/C (AM)  
POSITION: GENERAL MANAGER  
RESPONSIBILITIES: PERSONAL HANDLING OF ALL  
NATIONAL AND REGIONAL SALES. COMPLETE  
RESPONSIBILITY FOR SALES, PROGRAMMING  
AND ALL OTHER DEPARTMENTS.

JUNE 1978--  
OCTOBER 1985

WKHI-FM STEREO: OCEAN CITY, MD  
50,000 WATTS  
FORMAT: CHR  
POSITION: PROGRAM DIRECTOR  
RESPONSIBILITIES: SUPERVISE 8 PERSON AIR  
STAFF. CREATIVE CONTROL OF PROGRAMMING  
FORMAT, MUSIC SELECTION, AND STATION  
PROMOTIONS. BOTTOM LINE CONTROL OF THE  
PROGRAMMING DEPT., SALARIES AND PROMOTION  
BUDGET.

JANUARY 1984-  
FEBRUARY 1986

WKRE-FM STEREO: EXMORE, VA  
50,000 WATTS  
FORMAT: COUNTRY  
POSITION: PROGRAMMING CONSULTANT  
CONCURRENT WITH PD POSITION AT WKHI  
RESPONSIBILITIES: CREATING AND SUPERVISING  
ALL NEW COUNTRY FORMAT.

NOVEMBER 1976-  
JUNE 1978

WWTR-FM OCEAN CITY, MD  
3,000 WATTS  
FORMAT: A/C  
POSITION: AFTERNOON DRIVE/PROGRAM CONSULTANT  
RESPONSIBILITIES: 4:00 PM TO 8:00 PM AIR  
SHIFT. MAINTAINED THE #1 RATED AIR SHIFT  
IN THE MARKET RESULTING IN A JOB OFFER FROM  
WKHI.

MAY 1975-  
OCTOBER 1976

WETT-AM OCEAN CITY, MD  
1,000 WATTS  
FORMAT: A/C  
POSITION: MID-DAY AIR SHIFT / PROGRAMMING  
CONSULTANT  
RESPONSIBILITIES: PRESENTED A PROFESSIONAL  
PERFORMANCE THAT RESULTED IN A BETTER JOB  
OFFER FROM WWTR.

APRIL 1970-  
MAY 1975

WRCP-AM/WRCP-FM  
50,000 WATTS -AM & FM  
PARTIAL SIMULCAST STEREO: PHILADELPHIA,PA  
FORMAT: COUNTRY  
POSITION: PROGRAM DIRECTOR  
RESPONSIBILITIES: SUPERVISED 8 PERSON AIR STAFF  
CREATIVE AND BUDGET CONTROL OF ALL PROGRAMMING  
AND PROMOTION FOR BOTH STATIONS, PLUS 3:00PM TO  
7:00PM AFTERNOON DRIVE AIR SHIFT.

JULY 1969-  
APRIL 1970

WAMS-AM WILMINGTON, DE  
5,000 WATTS  
FORMAT: TOP 40  
POSITION: PROMOTION DIRECTOR/AFTERNOON DRIVE  
RESPONSIBILITIES: ALL ON AIR PROMOTIONS AND  
PM DRIVE PERSONALITY.

FEBRUARY 1966-  
JULY 1969

WICO-AM/FM SALISBURY, MD  
3,000 WATTS  
FORMAT: COUNTRY  
POSITION: PROGRAM DIRECTOR  
RESPONSIBILITIES: ALL PROGRAMMING AND MID-DAY  
AIR SHIFT.

MAY 1963-  
FEBRUARY 1966

WETT-AM OCEAN CITY, MD  
1,000 WATTS  
FORMAT: TOP 40  
POSITION: PROGRAM DIRECTOR  
RESPONSIBILITIES: ALL ON AIR PROGRAMMING AND  
THE 3:00 - 7:00 AIR SHIFT

JANUARY 1961-  
JANUARY 1962

WDMV-AM POCOMAKE CITY, MD  
1,000 WATTS  
FORMAT: TOP 40  
POSITION: NEWS DIRECTOR  
RESPONSIBILITIES: SUPERVISED ALL LOCAL NEWS  
AND RESPONSIBLE FOR THE 10:00AM - 2:00PM AIR  
SHIFT

APRIL 1981-  
AUGUST 1981

WMDT-TV CHANNEL 47, SALISBURY, MD  
ABC AFFILIATE  
POSITION: HOST, CREATOR, PRODUCER  
WRITER FOR "GILLEN TRAX MUSIC", A 15 MINUTE  
TV MAGAZINE FORMAT REVIEWING CONTEMPORARY  
MUSIC.

FEBRUARY 1982-  
JANUARY 1983

SALISBURY DAILY TIMES, SALISBURY, MD  
POSITION: COLUMNIST FOR :ROCK 'N' ROLL TRAX  
A MUSIC REVIEW COLUMN THAT APPEARED IN THE  
WEEKLY ENTERTAINMENT SECTION.

**EDUCATION:**

AMERICAN ACADEMY OF DRAMATIC ARTS, PHIL. PA  
BROADCASTING MAJOR  
VETERAN U.S. NAVY: HONORABLE DISCHARGE  
NORTHEAST CATHOLIC HIGH SCHOOL

**PERSONAL DATA**

MARRIED: THREE CHILDREN  
HEIGHT: 5'6"  
WEIGHT: 135 LBS.  
MALE: CAUCASIAN

**MEMBER  
FAST TO PRESENT**

LOCAL BUSINESS ORGANIZATION  
SALISBURY CHAMBER OF COMMERCE  
OCEAN CITY CHAMBER OF COMMERCE  
OCEAN CITY HOTEL/MOTEL ASSOCIATION  
OCEAN CITY DOWNTOWN IMPROVEMENT ASSOC.  
BERLIN CHAMBER OF COMMERCE

**EXHIBIT 2**

# Facilities of Stations Listed in this Report

Station	Power(Watts)/HAAT(Meters)		Frequency	Network Affiliation	City of License/ID	County/Split County	ST	National Representative
	AM - Day FM - ERP	AM - Night FM - HAAT	(AM in kHz) (FM in MHz)					
HOME TO ARBITRON RADIO METRO AREA								
MAFL-FM	3,000	100	97.7	IND	MILFORD/DOVER	SUSSEX	DE	TORBET RADIO
(S) WDVH-FM	2,100	117	105.5	IND	SALISBURY	WICOMICO	MD	REPUBLIC RADIO INC.
WECV-FM	3,000	70	98.3	SMN	SEAFORD	SUSSEX	DE	N/A
WZBD-FM	3,000	91	92.7	IND	REHOBOTH BEACH	SUSSEX	DE	N/A
WICO-AM	1,000		1320	IND	SALISBURY	WICOMICO	MD	TORBET RADIO
WICO-FM	3,000	91	94.3	IND	SALISBURY	WICOMICO	MD	TORBET RADIO
WJOY-AM	5,000		1470	NBN	SALISBURY	WICOMICO	MD	ROSLIN RADIO SALES
(S) WOH-FM	50,000	98	99.9	IND	OCEAN CTY/SALISBURY	WORCESTER	MD	N/A
(S) WLVR-AM	5,000	5,000	960	MBS	SALISBURY	WICOMICO	MD	N/A
WQMG-FM	33,000	186	104.7	MBS	OCEAN CTY-SALISBURY	WORCESTER	MD	N/A
(S) WQCC-FM	3,000	100	103.9	ABC E	BERLIN/OCEAN CITY	WORCESTER	MD	KATZ & POWELL
WOLC-FM	50,000	152	102.5	IND	PRINCESS ANNE	SOMERSET	MD	N/A
(S) WPKC-FM	3,000	91	101.7	NBC	OCEAN VIEW/SALISBRY	SUSSEX	DE	BANNER RADIO
WBSY-FM	6,000	100	98.9	CBS	SALISBURY	WICOMICO	MD	N/A
WSEA-AM	1,000	112	900	SMN	GEORGETWN/OCEAN CTY	SUSSEX	DE	ROSLIN RADIO SALES
WVTR-FM	6,000	91	95.9	IND	BETHANY BCH/OCEAN C	SUSSEX	DE	BANNER RADIO
WZBH-FM	2,650	106	93.5	IND	GEORGETOWN	SUSSEX	DE	ROSLIN RADIO SALES
OUTSIDE ARBITRON RADIO METRO AREA-----								
WDSB-FM	50,000	110	94.7	MBS	<DOVER/WILMINGTON>	KENT	DE	ROSLIN RADIO SALES

<b>Footnote</b>	(#) Listed only in Metro and Total Survey Area. (@) Listed only in Area of Dominant Influence. (S) Station subscriber as of date of printing.		
<b>Symbols:</b>	< City of License/ID > indicates home listing by virtue of station's chosen home City of Identification rather than by station's legally authorized City of License. (See Paragraph 40 in the back of this report.)		
<b>Network</b>	ABC C/ABC Contemporary Radio Network	CBS/CBS Radio Network	SMN/Satellite Music Network
<b>Affiliation</b>	ABC D/ABC Direction Radio Network	CNN/Cable News Network	Source/The Source
<b>Abbreviations:</b>	ABC E/ABC Entertainment Radio Network	CRC/Cadena Radio Centro	SUN/Sun Radio Network
	ABC FM/ABC Radio Network	IND/(Denotes Independent Stations)	TALKNT/Talknet
	ABC I/ABC Information Radio Network	MBS/Mutual Broadcasting System Radio Network	UNISUP/Unistar (Super)
	ABC R/ABC Rock Radio Network	NBC/NBC Radio Network	UNIULT/Unistar (Ultimate)
	ABC T/ABC Talkradio	NBN/National Black Network	UNIPWR/Unistar (Power)
	APR/Associated Press Radio Network	RADRAD/CBS RadioRadio Network	UPI/United Press International Radio Network
		SBN/Sheridan Broadcasting Network	

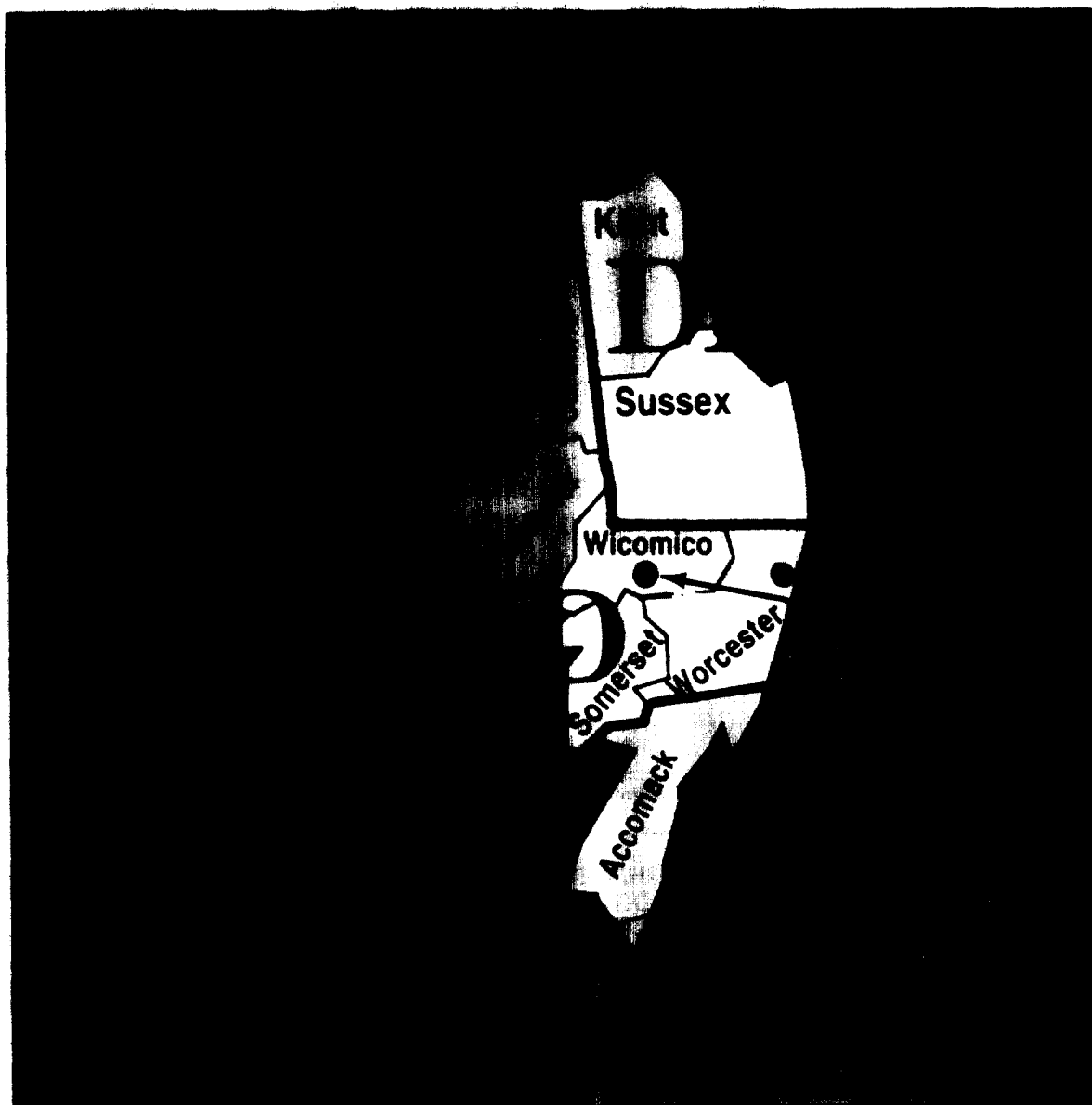
The data above are the most current data available to Arbitron as of this survey period. Stations are listed only if they have met Arbitron's Minimum

Reporting Standards for this survey (see Pars 37-40 in the back of this report.) The county or split county listing reflects the geographic location of the station's City of License.

Stations for which no National Representative and/or Network information is on file are listed above by N/A or a blank, as appropriate.

**EXHIBIT 3**

# Salisbury-Ocean City



☐ Metro
 ☒ TSA
 ☒ ADI

For definitions of Metro, TSA and ADI, see Paragraphs 18, 29 and 2 in the back of this report.

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**Market Rank:** 151

**Market Surveyed:** SPRING

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# ARBITRON

THE ARBITRON COMPANY

## 1990 - 1991 SCHEDULE OF SURVEYS

### Summer 1990

June 21 - September 12

### Fall 1990

September 20 - December 12

### Winter 1991

January 3 - March 27

### Spring 1991

March 28 - June 19



### WHAT EMRC ACCREDITATION MEANS

The Arbitron Radio Service has been accredited by the Electronic Media Rating Council since 1968. To merit continued EMRC accreditation, Arbitron (1) adheres to the Council's Minimum Standards for Broadcast Rating Research; (2) supplies full information to the EMRC regarding all details of its operation; (3) conducts its measurement service substantially in accordance with representations to its subscribers and the Council and (4) submits to, and pays the cost of, thorough ongoing audits of Arbitron operations by CPA firms engaged by the EMRC. In addition to sizable annual audit charges, Arbitron provides office and file space for EMRC auditors as well as considerable staff and computer time involved in various aspects of these inspections.

Further information about the EMRC's accreditation and auditing procedures can be obtained from the Executive Director, Electronic Media Rating Council, 509 Madison Avenue, Suite 1112, New York, New York 10022.

## PREFACE

This report is a compilation of radio audience estimates designed to represent radio listening during a typical week for this market for the Winter 1990 survey period. The surveys to which the Metro Audience Trends estimates apply are identified in the Metro Audience Trends section of this report. The estimates are based on listening information recorded in seven-day diaries by persons 12 years and older. All audience estimates are approximations subject to statistical variations related to sample size and other limitations. The reliability of audience estimates cannot be determined to any precise mathematical value or definition.

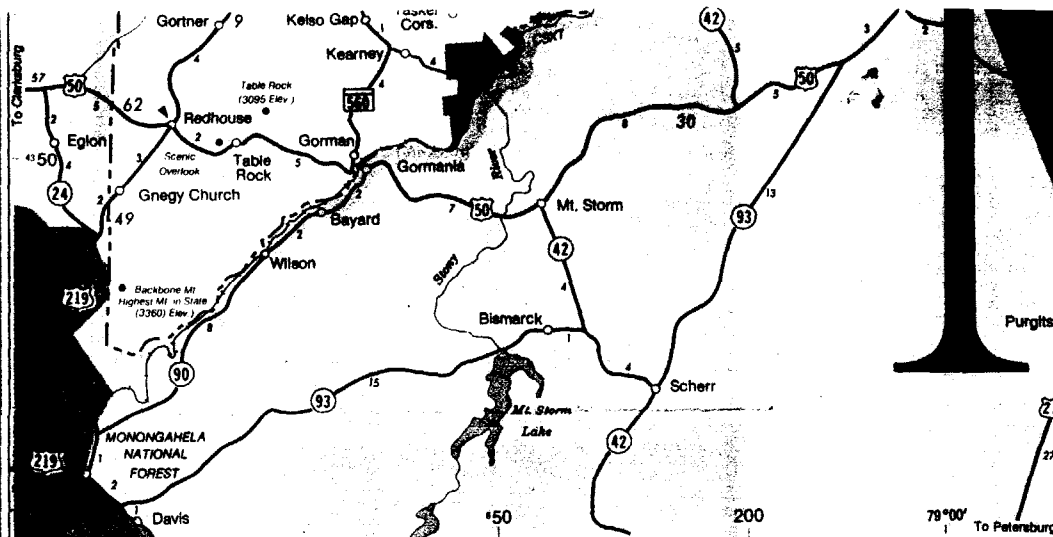
This report is intended to furnish radio station, advertiser and agency clients of Arbitron with an aid in evaluating radio audience size and composition. Arbitron attempts to provide herein a summary description of methodology that may be understood by all who use the report. A more detailed description of Arbitron methodology can be found in a separate publication, provided to all syndicated radio report subscribers, entitled *Radio Description of Methodology*.

## WARNING

All Arbitron audience estimates and Arbitron maps are copyrighted. The willful, unauthorized use of any Arbitron audience estimate or map constitutes copyright infringement which could subject the infringer to civil damages of up to \$50,000 and criminal penalties of up to one year imprisonment and a \$25,000 fine pursuant to Chapter 5, Sections 504 and 506 of Title 17 of the U.S. Code.

**PLEASE NOTE**/Users of this report should become familiar with the sections of this report entitled the *Description of Methodology* (Pages ii-iv) and *Limitations* (Page iv, Paragraph 46). Further, instructions for estimating reliability and effective sample bases for this report may be found on Page v. See Page 2A for the Table of Contents and survey schedule for this market.

**EXHIBIT 4**



# Ma

